

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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IN RE:

ROBERT F. CALLAHAN

CASE NO. 95-62196

Debtor

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CHRISTINA ROMAS as assignee of  
Stavroula Romas

Plaintiff

vs.

ADV. PRO. NO. 96-70020

ROBERT F. CALLAHAN

Defendant

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MEMORANDUM-DECISION AND ORDER

The "Plaintiff", Christina Romas, commenced the within adversary proceeding by the filing of a complaint on February 12, 1996, seeking to determine the discharge of Robert F. Callahan (Debtor/Defendant herein) under §727 of the Bankruptcy Code (11 U.S.C. §§101-1330)("Code") in the voluntary Chapter 7 case commenced by Robert F. Callahan. The matter of instant concern deals with the Plaintiff's demand for a jury trial.

JURISDICTIONAL STATEMENT

The Court has jurisdiction over the parties and subject matter of this core proceeding pursuant to 28 U.S.C. §§1334 and 157(a), 157(b)(1), (b)(2)(A) and (B).

## DISCUSSION

The Seventh Amendment preserves the right to trial by jury for suits at common law, but does not apply to suits in equity. See Granfinanciera, S.A. v. Nordberg, 492 U.S. 33, 109 S.Ct. 2782, 2790 (1989); Germain v. Connecticut Nat'l Bank, 988 F.2d 1323, 1328 (2d Cir. 1993) (citing Parsons v. Bedford, 28 U.S. (3 Pet.) 433, 446-47 (1830)).

The test for determining whether a party is entitled to a trial by jury requires a court to "determine first whether the action would have been deemed legal or equitable in 18th century England [prior to the merger of the courts of law and equity], and second whether the remedy sought is legal or equitable in nature. The court must balance the two, giving greater weight to the latter." Germain v. Connecticut Nat'l Bank, *supra*, at 1328 (citing Granfinanciera, *supra*, 109 S.Ct. at 2790); In re Perry, 111 B.R. 861, 863 (Bankr. C.D.Cal. 1990).

Because discharge proceedings and objections to discharge are characteristically equitable in nature, see Local Loan v. Hunt, 292 U.S. 234, 54 S.Ct. 695 (1934)), the Plaintiff is not entitled to a jury trial on the within complaint. See In re Schmidt, 188 B.R. 36, 38 (Bankr. D.Nev. 1995)(citing In re Trinsey, 114 B.R. 86 (Bankr. E.D.Pa. 1990) and In re Hooper, 112 B.R. 1009 (9th Cir. BAP 1990)); In re Whitehorn, 99 B.R. 734 (Bankr. N.D.Tx. 1989). Accordingly, Plaintiff's demand for same is hereby denied.

**IT IS SO ORDERED**

Dated at Utica, New York  
this 20th day of March 1996

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STEPHEN D. GERLING  
Chief U.S. Bankruptcy Judge